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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jacqueline Scott Corley, Magistrate Judge

IN RE FACEBOOK, INC., CONSUMER)
PRIVACY USER PROFILE)
LITIGATION.)

NO. 18-MD-02843 VC (JSC)

San Francisco, California
Friday, May 15, 2020

TRANSCRIPT OF PROCEEDINGS BY ZOOM

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Friday - May 15, 2020

9:00 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil action 18-md-2843, In Re Facebook, Inc., Consumer Privacy User Profile Litigation. The Honorable Jacqueline Scott Corley presiding.

Counsel, starting with plaintiffs, please make your appearance for the record.

MR. LOESER: Good morning, Your Honor. Derek Loeser for the plaintiffs.

THE COURT: Good morning.

MS. WEAVER: Good morning, Your Honor. Leslie Weaver for the plaintiffs as well.

THE COURT: Good morning.

MR. KO: Good morning, Your Honor. David Ko, Keller Rohrbach, on behalf of the plaintiffs.

THE COURT: Good morning.

MR. GOULD: Ben Gould with Keller Rohrbach for the plaintiffs.

THE COURT: Good morning.

MS. LAUFENBERG: Good morning, Your Honor. Cari Laufenberg, Keller Rohrbach, on behalf of the plaintiffs.

THE COURT: Good morning.

MR. MONTGOMERY: Good morning, Your Honor. Matt Montgomery on behalf of plaintiffs.

1 **THE COURT:** Good morning.

2 **MS. DAVIS:** And Anne Davis on behalf of plaintiffs.

3 **THE COURT:** Good morning.

4 **MS. ORNELAS:** And Angelica Ornelas on behalf of
5 plaintiffs.

6 **THE COURT:** All right. Good morning.

7 **MR. FIERRO:** And Eric Fierro on behalf of plaintiffs.

8 **THE COURT:** Good morning.

9 And for Facebook. Oop, Mr. Snyder, you're on mute.

10 **MR. SNYDER:** Sorry. Good morning and Happy Friday,
11 Your Honor. It's Orin Snyder joined by Martie Kutscher and
12 Russ Falconer -- I forgot who was on -- for Facebook.

13 **THE COURT:** All right. Good morning.

14 **MR. SNYDER:** Nice to see you-all.

15 **THE COURT:** Okay. So thanks very much for your
16 statement, and I was pleased to see that the parties made a lot
17 of progress on the custodians.

18 So let me see just if I understand just in terms of
19 numbers. Facebook has now agreed to search is it 72 custodians
20 and plaintiffs want 81?

21 **MR. SNYDER:** Yes, Your Honor.

22 **THE COURT:** Okay. All right. We're just going to go
23 with the 81.

24 So let's now talk about the Price Waterhouse thing. As I
25 understand it, Facebook now says that they produced e-mails

1 that identify the persons whom PWC asked to interview; is that
2 right?

3 **MR. LOESER:** Your Honor --

4 **MR. SNYDER:** Ms. Kutscher?

5 **MS. KUTSCHER:** Yes, Your Honor. What we -- we have
6 not been able to locate an exact list of who was interviewed,
7 but we've identified to plaintiffs that the production we made
8 about six weeks ago has about 1500 e-mails that discuss the
9 audits, including who was going to be interviewed, who the
10 control owners were, who were on the privacy XFN team, those
11 types of details.

12 **THE COURT:** Okay. All right. And so, Plaintiffs, now
13 you're starting to review those e-mails?

14 **MR. KO:** That's correct, Your Honor. This is David Ko
15 on behalf of plaintiffs.

16 Facebook has directed us to approximately 1600 documents
17 last Saturday, some of which we have obviously gone through the
18 process of reviewing before they identified them, but we are
19 reviewing them and we're reviewing them as fast as we can. And
20 it's been a very fruitful process to identify some of the
21 relevant people that had knowledge about Facebook's privacy
22 controls, and so we believe that we can look at these documents
23 in short order and identify who we think are the relevant
24 people.

25 **THE COURT:** Well, this is what I think I want to do.

1 I think we have these 81 now, and I think we should just get
2 started. And Facebook had said before, "Look, if something
3 comes up in discovery and you identify somebody with relevant
4 information we didn't search, then we can do that then." So I
5 want you to review those documents.

6 I also want you to review all the regulatory -- you know,
7 the stuff that's already been produced, which, you know,
8 presumably should be quite -- and then let's talk about more
9 than the 81 but not until then. Okay?

10 So after you do all that, if you can identify somebody who
11 there's a missing gap, then we do that, but I don't see how we
12 know if there's a gap missing until you review those. So
13 there's no rush I guess I would say on that.

14 All right. On the -- so we have our 81 and we'll move
15 forward on that.

16 On the ESI discussions, I'm not going to require any
17 more -- I'm not going to do what the plaintiffs proposed. If
18 there is something in particular in context that you can show
19 me you need, I'll address it then; but I just think we need to
20 move past that right now. I'm not satisfied there's anything
21 more in particular that you need. You just need to get started
22 on this ESI production.

23 So now with respect to the search terms -- and I need to
24 hear from Facebook -- I do not understand this custodial
25 interview. I've been doing this for nine years now. This is

1 the first time anyone said that to me.

2 So why don't we first start with plaintiffs and what their
3 proposal is as how we get these search term negotiations going,
4 and then I'll hear from what Facebook's proposal is.

5 **MS. WEAVER:** Good morning, Your Honor. Unless -- I'll
6 defer to my -- Derek, do you want to address this or shall I
7 just jump in?

8 **MR. LOESER:** You know, you should probably start only
9 because there's a printer sitting next to my computer and
10 somebody in my house is printing something.

11 **MS. WEAVER:** No problem. I'm happy to do it.

12 Well, so we're cutting to the chase pretty quickly,
13 Your Honor, and, honestly, we hadn't really dug in on the next
14 phase other than to propose, you know, the regular process I
15 know Your Honor is familiar with, which is now that we have
16 custodians and if we can identify what search terms would apply
17 to what custodians. We've actually begun that process on the
18 plaintiffs' side.

19 We do need a little more information about jargon and how
20 certain sources of documents should be searched. Specifically
21 we just learned that the Hive, which is the data -- one of the
22 databases that maintains user content and data, can be searched
23 through SQL. So we think it would be really helpful to have an
24 ESI specialist who knows about SQL searching, and we have one
25 that we can bring to meet and confer.

1 And if Facebook could bring somebody who can explain in
2 detail, and I don't mean, honestly, a lawyer. I mean somebody
3 who understands how the database works and how they do -- like
4 a data scientist. I know that Facebook has been talking to
5 them.

6 If we could actually have a meet and confer of the people
7 who really understand this stuff, that would be helpful in
8 terms of how to search that because it's a little bit out of
9 the norm. It's not -- so there's search terms that will work
10 in e-mail -- right? -- and correspondence, and we understand
11 that and we lawyers can do that.

12 The second question of how to get our arms around getting
13 access to the data maintained in this database -- and we don't
14 want to do it inefficiently either. We don't want to be dumped
15 with, you know, massive amounts of data that we can't do
16 anything with. So that's where kind of we're stuck on the ESI
17 piece.

18 But we proposed deadlines. You know, if Facebook can now
19 they -- now that they have custodians, they can make a proposal
20 to us with search terms, we will respond within a week. They
21 can run them, give us hit reports. We can look at them. That
22 was the schedule that we basically were thinking about for
23 search terms, and I think we said by June 2nd --

24 **THE COURT:** Yeah.

25 **MS. WEAVER:** -- by June 9th.

1 **THE COURT:** Maybe, Ms. Weaver, we should break it down
2 by custodians because it sounds like you are agreeing to some
3 extent they're going to need to know the jargon and things like
4 that.

5 **MS. WEAVER:** Right.

6 **THE COURT:** So maybe we should break it into groups --
7 right -- so we'll start with these groups. Because it sounds
8 like what you're envisioning that the search terms will vary,
9 which makes sense, depending on the custodians -- right? -- and
10 what area. So maybe you should start with identifying -- well,
11 let's start with -- then I would -- you know, you start however
12 you want. I think you'd want to start with the most important.

13 Let's start with these people that are relevant to these
14 claims -- this claim because the search terms will then match,
15 and then Facebook can do what -- as opposed to doing all of
16 them or waiting to do all of them at once. It doesn't seem to
17 make any sense.

18 **MS. WEAVER:** We could do that. I would say rather
19 than claim, it's probably going to be department. Like
20 engineers talk to each other a certain way, and then people in
21 marketing and communications may use other language. I'm
22 guessing. But maybe Facebook is going to come back and say
23 they all speak the same language and they all do the same
24 thing. We don't know. We're open to suggestion.

25 **THE COURT:** All right. Let's hear what Facebook

1 proposes.

2 **MR. SNYDER:** Yeah. Your Honor, thank you. I'm going
3 to let Mr. Falconer address the details; but at a high level,
4 what we're proposing is a process that enables us to
5 efficiently and then effectively run the right search terms on
6 the right documents in the right way.

7 And the reason we have raised this custodial point is it's
8 not just a case where we're going to apply search terms to
9 e-mails. It's a much more complex process; and if we don't
10 front load it with what is our now diligence process that we
11 need to do, which will be -- have some -- which will be
12 privileged, it's going to make the meet and confers ineffective
13 and the plaintiffs aren't going to get what they want.

14 So Mr. Falconer can go through in specifics why what we're
15 proposing is not designed to delay but, rather, expedite and
16 facilitate getting the plaintiffs the documents they want in
17 the most timely fashion.

18 **THE COURT:** I want to know why we can't do it like --
19 I don't see why we have to wait; right? Why we can't do it as
20 an iterative process. That's what sort of struck me is you
21 say, "Well, 30 to 60 days and then we can start," but I didn't
22 like that so --

23 **MR. SNYDER:** Okay.

24 **THE COURT:** Go ahead, Mr. Falconer.

25 **MR. FALCONER:** Thank you, Your Honor.

1 I think we're certainly happy to think about how we could
2 implement an iterative process like Your Honor has described.
3 You know, what we need to do now, we've got at this point 81
4 custodians who we're going to be working with, we need to talk
5 to those folks about some of the stuff that Ms. Weaver has
6 described, what kind of jargon or specialized terminology or
7 shorthand to you and people on your team and people in your
8 department use. We're going to use that information to help
9 design, you know, effective search terms that are not overbroad
10 and not underinclusive.

11 We also need to talk to those folks about where we need to
12 be running those search terms. You know, we have a general
13 sense of -- we've done preservation interviews of what -- just
14 what are the data sources you use in your work so we can
15 preserve them all. We need to go back in now, talk to those
16 folks about, "Okay. Here's what we're looking for. You know,
17 where shall we be collecting from? What types of data and what
18 sources of data shall we be running these research terms
19 against?"

20 So the number of custodians here, you know, with 81
21 custodians, if we were able to do five of those custodial
22 interviews a day, which is a pretty ambitious schedule given
23 for a variety of reasons, I mean, that's still a multiweek,
24 more than a month process.

25 So I think Your Honor's suggestion makes sense that we can

1 try to work with plaintiffs to prioritize subgroups of those
2 custodians and put together a group. You know, once we've
3 talked to a handful of people, we can start running search
4 terms against some of their data if we think that would be, you
5 know, a more effective way to do it.

6 But, you know, because there's some different kinds of ESI
7 in this case and in a typical case it would just be e-mails,
8 PowerPoints, and Word documents, you know, as Mr. Snyder said,
9 we just need to be more thoughtful on the front end so nobody
10 wants too little and nobody wants too much. You know,
11 there's --

12 **MR. SNYDER:** And maybe you can address the so-called
13 Hive -- H-I-V-E -- tables as illustrative of the challenges
14 that we face in getting the plaintiffs what they need.

15 **MR. FALCONER:** Sure. I don't know if Ms. Kutscher
16 wanted to address that or I'm happy to. Either one.

17 **MS. KUTSCHER:** Sure. You know, one of the things
18 we've been talking about a lot with plaintiffs is data that
19 exists in a database called Hive, and one of the things we've
20 been talking about is the database itself is not index
21 searchable. It includes many millions of tables that they're
22 interested in.

23 So one of the things we really want to be able to do is
24 talk to the custodians to identify which tables would be the
25 relevant tables that we can start looking at, otherwise we're

1 dealing with an unindexed set of many millions of tables that
2 would be many, many petabytes of data. So we really need to
3 talk to these folks to know which ones to start with.

4 **THE COURT:** Okay. But, Ms. Weaver, do you have a
5 proposal? Like, you'll tell them by X date "This is the
6 department people we want to start with so we can develop some
7 sort of schedule"?

8 **MS. WEAVER:** Yes, we can do that. This is a new idea
9 to us so I think we need to think about it.

10 I have two clarifying questions. One is, we had talked
11 earlier about CEO Zuckerberg and Sheryl Sandberg as custodians
12 too. We do think that they are integral to this. You tell us
13 when you think they should fall; but obviously even in the
14 e-mail that we gave you, Your Honor, attached to our statement,
15 Mr. Zuckerberg is e-mailing directly with one of these
16 custodians. We can wait or defer. So that's a question for
17 you.

18 **THE COURT:** I think we can wait. I mean --

19 **MS. WEAVER:** Okay. That's fine.

20 **THE COURT:** -- we can get him, but it's not -- I think
21 that we don't -- you don't want everything at once.

22 **MS. WEAVER:** That's fine. So, yes, let us think about
23 how to do that.

24 And I guess I would add again that it would be really
25 helpful if when Facebook gets this information about the Hive,

1 if we can have our expert talk to their people about -- because
2 otherwise it's going to get very complicated.

3 I'm not sure -- other than getting direct access to
4 experts with source code, I don't think we've ever dealt with
5 this before. I mean, this is of a magnitude and scope that is
6 highly unusual, and we really need to get information and be
7 strategic about it. I mean, Facebook is going to say that too.

8 Martie, I keep forgetting, but what's the volume of data
9 in the Hives?

10 **MR. SNYDER:** 42 million. There are 42 million tables.

11 **MS. WEAVER:** So we need -- we don't want all
12 42 million tables either. We want the right ones.

13 **THE COURT:** What about that? I mean, that seems to
14 me -- I know you didn't want to bring your data scientist to
15 every single meeting, but you referred to the data scientist,
16 or somebody you've been speaking to, in your statement. Why
17 not just have that person talk to their expert so that when you
18 have conversations, the plaintiffs then are just more informed
19 and that will be a more meaningful conversation?

20 **MS. KUTSCHER:** One of the things we've been trying to
21 convey to the plaintiffs, perhaps not effectively so I'll try
22 again, is that there's no single person at Facebook and no data
23 scientist who knows all of the tables in the Hive. The Hive is
24 a place where individual teams conduct work, they run their own
25 analytics in the Hive, and it's not really organized in a way

1 that anyone at the company would be able to identify where the
2 materials they're looking for are.

3 So what we're actually doing and what we hope to continue
4 to do in custodial interviews is speak with each of the data
5 scientists on the particular teams at issue who would know
6 where the right tables are so there isn't one person we can
7 bring to the discussion; and when we're working with our
8 client, we can't even identify one person to talk to. We're
9 talking to many people across the company.

10 **THE COURT:** Okay. But if we're starting with
11 particular custodians in a particular department, then there
12 will be a particular data scientist. He might not know
13 everything; right? But -- I don't understand the resistance.
14 I don't understand it.

15 **MR. SNYDER:** Your Honor, let me try this. There's no
16 resistance, and I'm sorry that Your Honor has that impression.
17 It's the opposite.

18 We want to do the work necessary, and my team literally,
19 Your Honor, is working around the clock to get everything done
20 that needs to get done, literally around the clock; and the
21 notion that we're delaying or resisting is just, respectfully,
22 not correct.

23 What we want to do is do the investigation necessary so
24 that we can then help them sort out where on the 42 million,
25 whatever the noun is, let's call them 42 million, you know --

1 what is it? Levels? Rows? I don't know what it is.

2 **MS. WEAVER:** Tables.

3 **MR. SNYDER:** -- tables, that we're going to do the
4 hard work for them. It would be herky-jerky and, frankly,
5 completely ineffective if we had to bring 15 different people
6 onto meet and confers. And, frankly, we're going to want to
7 have some privilege conversations with them as well, and so --

8 **THE COURT:** But that's not what I'm -- that's not what
9 I'm saying at all, and please don't exaggerate what I said.

10 What I said is there's -- what I said is the plaintiffs
11 have candidly expressed a lack of knowledge as to how the Hive
12 works and a desire to work with you and to not make unnecessary
13 work.

14 What they're saying is "We have an expert. We hired an
15 expert. Our expert doesn't work at Facebook obviously, and we
16 would like our -- to -- our expert to have as good as
17 understanding as she can have so when we're working with a
18 particular department and after you've done all your work and
19 all that, that's fine, do all that what you need to do, then if
20 your data scientist who you worked with, just one of them, best
21 most knowledgeable, can talk to our data scientist. It can
22 even be offline. You guys don't even have to be there. So our
23 data scientist can explain to us in plain English, not waste
24 your time, just how it works so that we feel comfortable."
25 That's all.

1 **MR. SNYDER:** My resistance --

2 **THE COURT:** You don't have to bring them to every meet
3 and confer or anything like that.

4 **MR. SNYDER:** My resistance is that it's not going to
5 be effective and what will be effective, Your Honor, is if we
6 come to the meet and confers, as we've done every time we
7 promised that we would, we will come with a silver platter and
8 explain it to their data scientists, explain it to the lawyers
9 in an effective, clear, transparent way. But if we have to do
10 it in a piecemeal where there are 15 or 20 different people
11 from the company showing up to ask -- answer questions, it's
12 not going to be efficient or effective.

13 May I suggest this. We will do the work. We will present
14 it to the plaintiffs and whatever experts they have; and if
15 they still have questions, then what we're going to do is go
16 back to the ranch and talk to as many people as we need to to
17 answer those questions.

18 And that's what we've been doing, Your Honor, and I think
19 our track record proves that every time the plaintiffs have
20 questions, we have answered them. We go back and we answer
21 them.

22 What I'm trying to explain is that there is no unitary or
23 easy process to just produce someone at a meet and confer who
24 can answer all the questions. That's the function that Russ is
25 playing working, you know, around the clock to try to go to

1 every portal in the company to aggregate the information and
2 then present it to the plaintiffs.

3 And it doesn't work as Your Honor suggested,
4 unfortunately. If it did, it would be easy. We would just get
5 an ESI person on the phone, they'd explain everything, and we'd
6 be done; but that's not the way it works unfortunately.

7 **THE COURT:** And that's not what I'm saying at all.
8 Nearly every case I have the technical people get on the phone
9 with each other at some point. I'm not even talking -- we can
10 do it with no lawyers. Maybe you don't want to do that.
11 That's fine. I'm not even talking about --

12 **MS. WEAVER:** That would be better.

13 **THE COURT:** It probably would be better.

14 And, look, I'm not saying do it all the time. We'll try
15 it once. Let's see. That's all. I'm just saying let's see,
16 let's see, so that every conference that I have I don't keep
17 hearing the same thing. Let's just see. Okay? We're going to
18 give it a shot. Whatever, but I'm not persuaded. Okay.

19 **MS. KUTSCHER:** If I could make a suggestion. If we're
20 going to have a conversation like that, it would be really
21 helpful to receive the questions in advance that the plaintiffs
22 are interested in so that we could make sure we can identify an
23 appropriate person --

24 **THE COURT:** Yes.

25 **MS. KUTSCHER:** -- because one of the problems we've

1 been having is the conversations sort of spiral into other
2 areas, and then we would need different people to answer.

3 **THE COURT:** We're not even there yet because, first,
4 the plaintiffs need to identify the custodians, the department
5 they want you to start with. Then you need to go back to that
6 department and do whatever, you know, your investigation,
7 figure out the jargon, talk to whoever they need to do; right?

8 This is sort of then whenever you sort of produce or talk
9 about or do your search terms -- I mean, what do you actually
10 propose in terms of -- you do that and then what?

11 **MS. WEAVER:** So, Your Honor, one of our experts who's
12 been texting me and says that, in fact, tables have fields and
13 what we need to know are the fields and what data is in the
14 fields, and she's saying that she can tell us what to ask for.
15 And she actually said this isn't the first time that Hive data
16 has been implicated in a class action.

17 So I think maybe we can get some specific questions. The
18 one caveat I would say -- and I think Your Honor is
19 experiencing kind of why we asked for it in writing, because we
20 actually thought that might be easier because there seems to
21 have been resistance from Facebook because they say we have to
22 talk to all these people, and I know that we're all trying, but
23 we don't feel like we're getting the answers we need.

24 So why don't we do a list of questions but we'd like to be
25 able to say as we're discussing something and Facebook says "We

1 don't know," we need to be able to follow up and get those
2 answers. And, you know, normally we would do that in writing
3 and send a follow-up letter and then they could write back, but
4 that's the one part that's been hard for us, is the circling
5 back and kind of following up on the details.

6 So we could maybe have two -- one meeting -- we'll send
7 them a list of questions -- we'll identify custodians. We send
8 the list of questions. Maybe that can even happen at the same
9 time. We have a meeting with the ESI liaisons and we chat. We
10 have a follow-up meeting to see where we are and then we could
11 report to you. Something like that.

12 **THE COURT:** I think it's probably helpful for Facebook
13 to know what your --

14 **MS. WEAVER:** Yeah.

15 **THE COURT:** -- ESI consultant believes and will be
16 telling you and what advice you'll be getting from them. Not
17 advice. Obviously that's privileged, but you know what I'm
18 saying.

19 **MS. WEAVER:** Yes.

20 **THE COURT:** So send the list so Facebook will have
21 that in mind when they're then doing whatever it is they're
22 doing, their custodial investigation with their data scientist.

23 And then -- I guess my question was to Facebook, then what
24 do you propose? So you know what the plaintiffs' questions
25 are. You'll have that in mind when you go talk to your data

1 scientists, and then what?

2 **MR. SNYDER:** Your Honor, Mr. Falconer will answer
3 that, but I just want to make clear one thing first, which is
4 that each table on the so-called Hive has to be searched
5 individually. We can't search across all tables like you can a
6 server with e-mails.

7 And so identifying -- the plaintiffs need to identify the
8 right tables. That's the key thing that we need in order to
9 then search the tables because there are 42 million of them,
10 and you can't just search across the whole platform
11 unfortunately.

12 **MS. WEAVER:** I'm hearing that --

13 **THE COURT:** How are the plaintiffs going to identify
14 the tables?

15 **MS. WEAVER:** We apparently could get a list that we
16 can load into Relativity. If Facebook identifies the tables,
17 we can take a look at them.

18 And if the data scientists talk directly, we'll lose -- we
19 don't have to have all this back and forth. They can just say
20 in whatever language that is. We know that it's searchable in
21 a language called SQL -- it's S-Q-L -- but if they just give us
22 a list of the tables in a format that we can load into
23 Relativity, then we're good to go, and that actually would save
24 the back and forth.

25 **MS. KUTSCHER:** If I may, Your Honor. What plaintiffs

1 are asking for is a list of 42 million tables, which would
2 encompass every table that shows any analytic that Facebook has
3 ever run as a company, which would obviously not be an
4 appropriate thing to produce in this case. It would show every
5 single thing the company has ever looked at data-wise, and
6 obviously that would then start a negotiation about 42 million
7 different tables and which ones are relevant here, which I'm
8 not -- I don't believe would be the most efficient way to move
9 forward.

10 So what we have proposed is that we talk to our custodians
11 and ask the custodians to identify the tables that they use,
12 and that we could then use that as the universe of tables that
13 we start looking at.

14 **MR. LOESER:** Your Honor, if I may just very briefly.
15 The Hive from what we can tell is an inordinately complex and
16 important database for Facebook. I would be very surprised if
17 there were not people at Facebook who were experts specifically
18 on the Hive. That's the kind of person -- that's probably not
19 one of the custodians. Maybe that person should be. But that
20 person is the one who can answer questions.

21 I'm sure all the time people at Facebook are asking about
22 how to extract data for one purpose or another from the Hive,
23 and there's probably a person at Facebook who helps direct that
24 effort. That would seem to be a very important person to talk
25 to and for our experts to talk to. Because, yes, we are not

1 interested in 42 million tables or the universe of information
2 in the Hive. We are looking for specific information that
3 relates to our case.

4 To go back to where this started, one of the things
5 Facebook has said to Judge Chhabria all along is they lack an
6 ability to identify who saw user data information, who they
7 shared it with. And so one of the things we want to figure out
8 from the Hive is: Is that a table that can be run? Is that
9 information that can be gathered?

10 And it's specific things like that that we're looking for.
11 So there must be some way that we can describe the kinds of
12 things that we want and for an expert at Facebook who works and
13 lives in the Hive to help direct where that information would
14 be. It should not have to be in a very complex and functional
15 database like this. It should not be a needle in a haystack.
16 It should be a search function that is possible.

17 **MR. SNYDER:** Your Honor, may I respond? And I
18 apologize for belaboring this.

19 The reason the custodian interviews are critical is that
20 we are going to ask these 81 individuals: Where -- when you
21 were dealing with A, B, C, D, E, F, and G issues, where did you
22 store discoverable information? Then we will be able to know
23 where in the 42 million Hive sources the information is.

24 There's no expert who knows that. The people who know it
25 are the 81 Facebook employees who, yes, they send e-mails and

1 those will be produced because those are searchable. But what
2 else do they do? Where else do they store their data, their
3 work, their knowledge? And it's only by talking to those 81
4 people, which we're prepared to do with alacrity, will we know
5 where they put the information, on which shelf at the
6 company -- at the 42 million shelves we need to look at.

7 And, Russ, maybe you can elaborate more technically about
8 it.

9 But this really is truly, Your Honor, our effort to get
10 them what they want and not have it a needle in a haystack.

11 Russ, you've been spending time on this. Maybe you can
12 elaborate even further.

13 **MR. FALCONER:** Sure.

14 And that's, I think, to Mr. Loeser's hypothetical, is
15 there a Hive table that has a particular kind of data in it,
16 there's no -- no one person at the company who knows what's in
17 all 42 million of those tables.

18 So as Mr. Snyder said, the trick is finding the right
19 tables. Once we find the tables, as Ms. Weaver has been
20 saying, their expert and any entry-level engineer knows how to
21 run a SQL query and look at the information in the table. So
22 working with the data once they have it is not a challenge.
23 The challenge is getting them the right data. The best way to
24 do that, really the only way to do that, is for us to talk to
25 our custodians and say "Do you have Hive tables on X, Y, Z

1 topics?"

2 So I do think it would be helpful to that effort, as
3 Your Honor has suggested, if we had a list from the plaintiffs
4 of "Here is what we're looking for in the Hive tables." That
5 would let us focus our search, you know, guide our custodian
6 interviews, and make sure that we're getting them what they're
7 interested in; and if it's not out there, we can tell them that
8 too.

9 **MR. LOESER:** Your Honor, the one thing --

10 **MS. WEAVER:** And, actually --

11 **MR. LOESER:** -- and I think that is some helpful
12 information, I just find it very hard to believe that there are
13 not people at Facebook who are experts in the Hive. So going
14 and talking to these subject matter custodians is one thing,
15 but going and finding the people who actually manage this beast
16 that is the Hive seems like another very important thing that
17 needs to happen here.

18 **THE COURT:** Why don't we just do it in context? Like,
19 let's do it. Why don't you pick 10 custodians to start with,
20 10. Let them go interview, whatever, tell you what you want,
21 have your expert look at it, and then your expert and their
22 data scientist can then talk about it in terms of what they've
23 given you. So it's not sort of just general out there. Now
24 you have specifics and then your expert can have a specific
25 conversation with their data scientist, nonlawyer person about

1 it and we'll use that as an example; or if we need to go more
2 quickly, we can even make it smaller, or something like that.

3 **MR. SNYDER:** I think that's a great idea, Judge.

4 **MS. WEAVER:** We can do that. If I could be heard.

5 I think -- I want to go back to the tables in the Hive
6 because the point is, in general, this is a case where the ESI
7 discovery is both merits and functional. Like normally when
8 we're doing this, it's functional and how do we get documents,
9 but it's also a merits issue here. And, you know, the very
10 fact that it's 42 million tables of data, that's just the scope
11 of the case. That's how much data is collected about users and
12 made available.

13 So we need two things. We actually need discovery of what
14 is in those tables, and getting us the list of the tables,
15 that's the case because we don't -- I think those tables are
16 relevant because what's happening is the data lives in the Hive
17 and then queries are constructed by data scientists and then
18 that's made available.

19 Well, Martie is shaking her head no, but this is why I'm
20 saying what we need is to have the people -- the experts talk
21 to each other before we can -- before we can guess in the dark
22 about what exactly we want.

23 And let me -- two things on these custodial conversations.
24 It is baffling to us because they should have happened earlier.
25 A lot of these 81 are former custodians or former employees.

1 So I don't know if they're imagining talking to them.

2 But if Facebook really went through a proper preservation
3 process, why don't they know this? Shouldn't they have had
4 this conversation a while ago? And we kind of have gotten
5 conflicting information about whether they've already had these
6 conversations or not, but it's a little unclear to us what's
7 happening in that process and why it would cause a further
8 delay.

9 **THE COURT:** Okay. So this is what I want you to
10 identify. How many do you want to do to start with? We're
11 going to do it in context. I just --

12 **MS. WEAVER:** We could do --

13 **MR. SNYDER:** I think we should start with five,
14 Your Honor, because we don't know how long it's going to take;
15 and if it's 10, it could be -- I think five is --

16 **THE COURT:** Well, somebody said five interviews a day
17 so --

18 **MS. WEAVER:** So we could identify 40. I don't know.

19 **THE COURT:** No. That's too many.

20 **MS. WEAVER:** That's half. That's too many? Okay.
21 20. 20. I don't care.

22 **THE COURT:** 10. We'll do 10.

23 **MS. WEAVER:** Okay.

24 **THE COURT:** We'll do 10. Yeah, we're going to do 10.
25 So -- I mean, or department. Around 10; right? If it's

1 11 or if it's 9 or whatever, don't make it artificial.

2 **MS. WEAVER:** I'm wondering if actually it would be
3 better to pick one from each department.

4 **THE COURT:** No. That's not what I want to do.

5 **MS. WEAVER:** Okay.

6 **THE COURT:** No.

7 **MS. WEAVER:** Okay.

8 **THE COURT:** No. No.

9 **MS. WEAVER:** All right.

10 **THE COURT:** You guys could do it if you could, agree
11 but you can't agree so you're leaving it up to me.

12 **MS. WEAVER:** Okay.

13 **THE COURT:** I prefer that you-all agree, I really
14 would -- because I don't really know what I'm doing, I'm doing
15 the best I can -- but apparently you can't so this is how we're
16 going to have to do it.

17 So pick 10. Pick 10 and -- or around 10 -- right? -- a
18 department, whatever it is; and you go, Facebook, do your
19 custodial searches. Today is Friday and by -- by what? By --
20 what are you going to give them in response to that?

21 **MR. SNYDER:** I'm sorry. You're asking me, Your Honor?

22 **THE COURT:** No. Mr. Falconer. What are you going to
23 give them? They've now done 10. You're going to do your
24 custodial interviews, and then you're going to do what?

25 **MR. FALCONER:** I think my understanding and if what

1 Your Honor is ordering is that the plaintiffs will provide us
2 with a list of I don't know if it's just Hive tables or if it's
3 all the data they're interested in or if we should use the RFPs
4 to guide that process, but that we --

5 **THE COURT:** It's people. It's people. Your statement
6 said, "We have to go do these custodial interviews." That's
7 what you told me.

8 **MR. FALCONER:** Yes, Your Honor.

9 **THE COURT:** I'm saying go do them, and then you're
10 going to do what?

11 **MR. SNYDER:** Your Honor, then we're going to talk --
12 we're going to find out how much Hive -- where in the Hive they
13 have put data that is responsive to either the RFPs or
14 responsive to the areas they're inquiring about, and then we
15 will know -- then we will figure out how to search those areas.

16 So it will be -- it will basically be segregating where in
17 the Hive data is likely to be, and that then will inform our
18 ability to see, well, how much is there there -- right? -- so
19 that when we start running target search terms on those
20 specific Hive folders, we know what the volume of data is.

21 So it's all designed to ultimately, you know, make
22 efficient and effective our retrieval and production of
23 documents. So if they give us 10 names, we're going to
24 interview those people, figure out where on the Hive they store
25 information, then assess how much is there. And then once we

1 get to the search terms, we can figure out, you know, how much
2 stuff is there and whether the search terms are over- or
3 underinclusive. It's not --

4 **THE COURT:** Right. What are you going to do? What
5 are you going to tell the plaintiffs? You do that and you're
6 going to tell the plaintiffs then what?

7 **MR. SNYDER:** I think that we've identified where on
8 the Hive the data lives that is responsive; and then I think
9 when we start talking about search terms, we can start applying
10 those search terms to those sources.

11 **THE COURT:** How are you going to come up with the
12 search terms?

13 **MR. SNYDER:** Well, that's going to be the negotiation
14 that has to occur.

15 **THE COURT:** Okay. So you're going to tell the
16 plaintiffs where on the Hive what you believe the relevant data
17 is and why. And are you then going to propose the first -- and
18 the volume.

19 And I think in the context, Ms. Weaver, when you give them
20 the 10 or whatever, approximately, the department names, if
21 your expert has particular things they should be looking for,
22 you should give them that as well.

23 **MS. WEAVER:** Okay. And, by the way, she thinks your
24 idea is actually a really good one so it might really help us
25 get at this.

1 So what I wanted to clarify is search terms, as we lawyers
2 understand them, will be run on regular ESI that we normally
3 work with -- chat rooms, e-mail -- and we will put that in the
4 list what we want for each person, and then separately the
5 request is what tables or data in the Hive relates to this
6 custodian.

7 And those are basically the questions, but we'll put them
8 in writing for all of them; and if there are any unique ones
9 for custodians, we'll put them in writing, and I think we can
10 probably do it by Monday or Tuesday.

11 **THE COURT:** So you're saying you'll provide them the
12 name of the custodians, the search --

13 **MS. WEAVER:** Yes.

14 **THE COURT:** -- you propose for traditional ESI we'll
15 call it?

16 **MS. WEAVER:** We don't yet have full-blown search terms
17 for each person yet.

18 **THE COURT:** Okay. All right. I misunderstood.

19 **MS. WEAVER:** I think it would be easier to let them
20 start because, you know, the example I always use is Chewbacca
21 in Enron, that is the name of a specific entity, and we would
22 never have thought to use "Chewbacca" as a search term because
23 we didn't know.

24 So I think what we could do is say "These are what we
25 think should be searched for these custodians." They could

1 propose search terms back to us, we could look at them, make
2 tweaks, and then they would run the searches and give us hit
3 reports. That usually -- that we propose -- we did propose an
4 agenda or a schedule, and what we proposed was -- you can tweak
5 it, of course, but it should take about a month I think to go
6 back and forth on search terms. Maybe less.

7 **MR. LOESER:** Your Honor, if I could just --

8 **THE COURT:** We narrowed it, but we're doing a subset
9 so --

10 **MS. WEAVER:** That's true.

11 **MR. LOESER:** Your Honor, if I may, if I could just
12 flag -- this is Derek Loeser speaking -- one issue on search
13 terms that I just want to make sure we don't lose sight of; and
14 that is that among the parties various disagreements, one of
15 them is "What is the proper subject of this litigation?" And
16 so Facebook has taken the position that certain categories of
17 information that we're seeking should not be produced; and,
18 therefore, I suspect that when search term discussions occur,
19 they're going to want to eliminate the search terms that relate
20 to those subjects.

21 And I just -- I'm not sure where in this process we sort
22 that out, but that is certainly something that's going to have
23 to get sorted out in this search term discussion.

24 **THE COURT:** I assume --

25 **MR. SNYDER:** I think that's an excellent point that

1 Derek raises.

2 And why don't we talk about it, Derek, when we think and
3 how we think it's best to tee that up for the Court.

4 But there's definitely a respectful disagreement. And,
5 Your Honor, you may think that we don't agree on everything,
6 but we do get along and mostly like one another. You know,
7 with this many grids, everyone can't like everyone.

8 **THE COURT:** You definitely like one another.

9 **MR. SNYDER:** No, Judge. Most of them hate me, but
10 it's okay. That's my job. My job is to be the bad cop.

11 But, in all seriousness --

12 **THE COURT:** No, it's nobody's job.

13 **MR. SNYDER:** I'm teasing.

14 **THE COURT:** It's nobody's job.

15 **MR. SNYDER:** I'm teasing.

16 **THE COURT:** Yeah. And what's everyone's job is to put
17 everything in perspective.

18 **MR. SNYDER:** Yes, Your Honor.

19 **THE COURT:** You know, we'll move this along, but we
20 learned today that one-third of our criminal pretrial
21 detainees, one-third are in quarantine at the jail. All your
22 judges are dealing every day spending hours dealing with this
23 kind of stuff, and that stuff takes priority.

24 **MR. SNYDER:** For sure.

25 **THE COURT:** I just want you to all keep that in mind.

1 Okay?

2 **MR. SNYDER:** And I know --

3 **THE COURT:** It's important, but there is, like --
4 people are, like, trying to figure out if their business is
5 going to last, if they're going to have food on their table
6 next week, or those kinds of things. So let's just keep --

7 **MR. SNYDER:** And I can assure Your Honor that both the
8 plaintiffs' counsel and we, in addition to representing our
9 clients here, have been trying to do our best, you know, in the
10 public sector and in the *pro bono* to help those folks. So we
11 keep this in perspective, and we appreciate how much time
12 Your Honor is spending on this.

13 And I'm -- just to wrap the point that Derek made, there
14 is going to be a disagreement about what's relevant and not
15 based on Judge Chhabria's ruling. So perhaps we can discuss
16 how to present that to Your Honor in an efficient way at some
17 point.

18 **THE COURT:** Yeah. And maybe we'll even present it to
19 Judge Chhabria; right?

20 **MR. SNYDER:** Right.

21 **THE COURT:** Because he's the one that ruled on the
22 motion to dismiss.

23 **MR. SNYDER:** Yes.

24 **THE COURT:** So that's something we can figure out as
25 well or, you know, we'll figure that out.

1 **MR. SNYDER:** Good. Thank you.

2 **THE COURT:** But first we have to, like, move it along
3 and get it.

4 So you said you can provide your 10 names.

5 **MS. WEAVER:** Yes.

6 **THE COURT:** It's around; right?

7 **MR. LOESER:** Yes.

8 **THE COURT:** It's a department. It shouldn't be 15.

9 **MS. WEAVER:** It will not.

10 **THE COURT:** Okay. And you're going to go do your
11 custodial investigations and then you're going to come back.
12 And with that you're going to identify I guess two things that
13 your expert tells you, or whatever it is, identify what
14 particular the information you want to know about that. And
15 then you'll do your meet and confer to hopefully begin your
16 negotiations on the search terms.

17 And then when we meet on the 29th, then I want an update,
18 and I hope you've moved quite far and that we can use this as a
19 template and adjust for the other 70 or so; right? So this is
20 sort of our -- we'll try it out with this one, and then we'll
21 adjust as we see.

22 **MR. KO:** Your Honor, one important and specific point
23 about the Hive that I just want to raise and preview for
24 Your Honor and folks. So one thing that they've been
25 explaining to us about the Hive is that, you know, it's not

1 indexed, it's not searchable. It's, you know, petabytes of
2 data, 42 million tables, and that a table only exists to the
3 extent someone requests a table to be made.

4 And so I think during these 10 or so custodial interviews
5 that take place in the near term, I think it's very important
6 for all the parties to understand the process by which these
7 requests are made. And so I think I'm just flagging that as
8 something that's very important for us to understand, and I
9 think that will streamline the ability for all the parties to
10 identify what the tables are.

11 **THE COURT:** All right. You got that, Mr. Falconer?
12 You seem to be the Hive expert on that team.

13 **MR. FALCONER:** I'm not sure if I'm up to that weighty
14 mantle but, yes, Your Honor, I understand Mr. Ko's question.

15 **MS. KUTSCHER:** Yeah. And just to contextualize, and I
16 think the point Mr. Ko just raised really helps to explain some
17 of the disconnect here, you know, the Hive isn't just a place
18 where Facebook dumps data or stores data. It's really an
19 internal tool that the company uses to run any analytics they
20 need, and tables exist to the extent that someone at Facebook
21 creates a table to look at something. So, for instance, if the
22 company wants to know how many people are logging onto Facebook
23 every day, someone will just create a table in the Hive to pull
24 that data to find out.

25 So, you know, tables exist for a whole lot of reasons.

1 People make them every day just to look at particular data
2 points, and the real challenge is just figuring out what are
3 the right ones, which ones should we be looking at.

4 **MR. LOESER:** And more broadly -- this is Derek
5 speaking -- you know, what data is in the Hive. That is
6 important because of this sort of threshold question of
7 Facebook's statement in this case that it doesn't track who
8 sees user data. And so if there's a way to figure that out
9 from the Hive, that's really important for this case.

10 **MS. WEAVER:** So, Your Honor, just for clarity, you can
11 give us a date by which we will make our ask. And then is
12 there a date for them to respond and/or -- I don't know how
13 you're feeling about having a data scientist available after
14 that so that people who know can talk to each other after we do
15 that initial.

16 **THE COURT:** If your data scientist, if she wants to
17 talk after -- after -- I mean, they have to provide you --
18 right? -- they have to give you the response --

19 **MS. WEAVER:** Right.

20 **THE COURT:** -- and provide you "This is what we know
21 and dah, dah, dah," and she should be in on those calls. And
22 if after having that she still has questions that haven't been
23 answered that she'd rather speak to somebody who speaks her
24 language, then I think they should just do a call.

25 **MS. WEAVER:** Okay.

1 **THE COURT:** The data scientists. That happens all the
2 time.

3 **MS. WEAVER:** Yes. Great.

4 **THE COURT:** I think it would be best if the lawyers
5 weren't on it but, of course, I'm not going to order that. And
6 I understand why lawyers don't want to do that, and that's fine
7 but, you know, that might be more productive.

8 **MR. LOESER:** Your Honor, it's Derek Loeser again.

9 Can I address one specific thing about the PWC issue?
10 And, again, this may be just a comment that needs to be made
11 for what comes down the road.

12 But, you know, we really do need to make sure that when
13 Facebook says if there are other custodians that are unearthed
14 through this process, that they in fact can be added and we're
15 not going to create some insurmountable, you know, standard
16 that Facebook designs for itself that would prevent the
17 addition of additional custodians.

18 **THE COURT:** Well, fortunately for you I'm the judge,
19 not Facebook so --

20 **MR. LOESER:** I'm very -- that is very fortunate for
21 us, Your Honor.

22 **THE COURT:** Or unfortunately. I don't know.

23 **MR. LOESER:** You can say that and make us all --

24 **THE COURT:** One way or the other, but Mr. Snyder said
25 that in our very first status conference. He's nodding

1 vigorously.

2 **MR. SNYDER:** We said we will in good faith consider
3 any additional custodians, and we understand that the judge
4 will rule and we will take responsible and appropriate
5 positions, and I'm sure we'll agree to add some and I'm sure
6 we'll say we don't want to add some.

7 **MR. LOESER:** Right. And the reason why I bring that
8 up again with PWC is that from the information that we have
9 gleaned from the documents that we reviewed, you know, when PWC
10 went out and did these audits, it went to look for the people,
11 and I'm sure Facebook provided them with the people that would
12 be most knowledgeable about the subject matter. And from what
13 we can tell, like, for 2013 by itself, 72 percent of the people
14 that PWC talked to are not custodians in this case.

15 We're just worried that through that process when PWC did
16 its assessment and concluded, for example, 2019 that Facebook's
17 controls were deficient, we just want to make sure that the
18 custodians include the people on which that determination was
19 made. And that's the kind of thing that I think we'll be
20 looping back to because we already can tell that a lot of those
21 people are not custodians, and we just want to make sure that
22 we have the opportunity to include them for that particular
23 purpose.

24 **THE COURT:** You have the opportunity certainly to make
25 the argument they should be included.

1 **MR. LOESER:** Okay. Thank you, Your Honor.

2 **THE COURT:** But when I'd like it to be done is when
3 you've reviewed everything --

4 **MR. LOESER:** Correct.

5 **THE COURT:** -- that you have so that we really know
6 that we're filling gaps that need to be filled.

7 **MR. LOESER:** Understood. Thank you.

8 **THE COURT:** Okay.

9 **MS. WEAVER:** I actually suspect -- this sampling idea
10 is very interesting because I suspect as we go through, we're
11 going to learn more about what we want and don't want anyway,
12 and so it may be a growing process. Even as we walk through
13 it, we find people or maybe we are, like, not sure about these
14 other people. So I think it could be very constructive.

15 **THE COURT:** Well, I'm hoping it actually will be a
16 shrinking process, not a growing one.

17 **MR. LOESER:** I'm just hoping Mr. Snyder stays in the
18 great mood that he's in right now.

19 **THE COURT:** He's always in that mood.

20 **MR. SNYDER:** I am.

21 And, Judge, I know we all thank you for your service in
22 helping those in dire circumstances, and it is a tragedy what's
23 happening in our jails and it's just -- it's just unfathomable.
24 You know, I forgot who said "You can judge a country by how it
25 treats its inmates."

1 **THE COURT:** I don't mean -- I just mean to say that
2 the court here is super busy. Not that it's service. It's our
3 job. It's what we signed up for, but there are certain -- it's
4 very busy; and I know these cases are important to you, as they
5 should be, and your clients are all lucky to have you, but
6 there just is a certain priority of things that are being dealt
7 with and just to sort of -- and just to try to keep it in mind;
8 right? I just think everything looks different now and
9 probably will for a long time.

10 **MR. SNYDER:** Yes, Your Honor.

11 **MR. LOESER:** Your Honor, you've either got a great
12 background or new background.

13 **THE COURT:** I'm in chambers.

14 **MS. WEAVER:** What are those things behind you?

15 **THE COURT:** They're books.

16 **MR. LOESER:** What?

17 **THE COURT:** They're F.3ds and it's a little bit easier
18 to do it from my conference room. I am the only person here.
19 I'm in my chambers. I close the door. I see nobody all day.
20 My staff does not come in.

21 **MR. SNYDER:** It sounds delightful.

22 **MS. WEAVER:** Well, Your Honor, we hear what you say
23 and I think we're all kind of walking through this together,
24 you know, as a country; but we will do our best to stay out of
25 your hair so you can focus.

